

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE:

MILFORD OTHELLO MUHAMMAD and
VERNITA MARIE ROBINSON,

Debtors.

MILFORD OTHELLO MUHAMMAD and
VERNITA MARIE ROBINSON,

Plaintiffs,

v.

US BANK NATIONAL ASSOCIATION, not in
its individual capacity but solely as Trustee
for the RMCA Trust, Series 2013 3-T; and
MTC FINANCIAL, INC. a Washington
corporation;

Defendants.

CASE NO. 15-16261-CMA

Chapter 13

Adv. Proc. No. _____

**ADVERSARY COMPLAINT
SEEKING QUIET TITLE TO
REAL PROPERTY AS TO
LENDER'S DEED OF TRUST AND
FOR DECLARATORY AND OTHER
RELIEF**

ADVERSARY COMPLAINT SEEKING QUIET TITLE TO REAL PROPERTY AS
TO LENDER'S DEED OF TRUST AND FOR DECLARATORY AND OTHER RELIEF

COMPLAINT TO QUIET TITLE
Robinson.2756.001 - 1

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1 **Plaintiffs.**

- 2 1. The Plaintiffs are the Debtors, Milford Othello Muhammad and Vernita Marie
3 Robinson, husband and wife (collectively, the "Robinsons").

4 **Defendants.**

- 5 2. The Defendants are as follows:
- 6 a. US Bank National Association ("US Bank"), a national banking association,
7 not in its individual capacity, but solely as Trustee for the RMCA Trust, Series
8 2013 3-T; and
- 9 b. MTC Financial, Inc., ("MTC Financial"), a Washington corporation.

10 **Jurisdiction.**

- 11 3. The Bankruptcy Court has jurisdiction over this adversary proceeding pursuant
12 to 28 U.S.C. § § 1334 and 157. This adversary proceeding is a core proceeding
13 pursuant to 28 U.S.C. § 157(b)(2). Venue for this adversary proceeding is proper
14 pursuant to 28 U.S.C. § 1409(a).
- 15 4. On 22 October 2015 ("Petition Date"), the Debtors filed a voluntary petition
16 commencing a case (the "Bankruptcy Case") under Chapter 13 of the Bankruptcy
17 Code. K. Michael Fitzgerald has been appointed as Trustee and the Debtors
18 remain as debtors in possession in the Bankruptcy Case.

19 **Real Property.**

- 20 5. The real property (the "Real Property") that is the subject of this lawsuit is
21 commonly known as 10037 19th Avenue Southwest, Seattle, WA 98146 and
22 legally described as follows:

1 Lots 33 and 34, and the North 5 feet of Lot 32, Block 2, Regal
2 Heights Addition, according to the plat thereof recorded in
3 Volume 20 of Plats, page 94, in King County, Washington.

- 4 6. The Robinsons purchased the Real Property in 1998 and have lived there
5 continuously since they purchased that Property.

6 **2007 Note and Deed of Trust.**

- 7 7. Prior to the Petition Date, on or about 26 February 2007, the Robinsons executed
8 a promissory note (the "Note") in the original face amount of \$285,000, secured
9 by a Deed of Trust (the "Deed of Trust") in favor of MERS, as Beneficiary, against
10 the Robinsons' Real Property. Copies of the Note and Deed of Trust are attached
11 as Exhibits A and B hereto, respectively. The Deed of Trust was recorded under
12 King County Recording No. 20070226000405. The Robinsons have never made
13 any payment on the Note since they executed the Note and have been in default
14 since the first payment was due.

15 **2008 Assignment of Note and Deed of Trust to Property Asset Management, Inc.**

- 16 8. On 17 March 2008, MERS assigned the Note and Deed of Trust to Property Asset
17 Management, Inc. by an assignment recorded under King County Recording No.
18 20080910000913, a copy of which is attached as Exhibit C.

19 **2008 Appointment of Northwest Trustee Services, Inc. as Trustee.**

- 20 9. On 10 September 2008, Property Asset Management, Inc. appointed Northwest
21 Trustee Services, Inc. ("Northwest") as Trustee under the Deed of Trust by an
22 Appointment recorded under King County Recording No. 20080910000914, a
23 copy of which is attached as Exhibit D.

1 **2009 Foreclosure by Northwest.**

2 10. Northwest then commenced a foreclosure on the Robinsons. On 1 July 2009,
3 Northwest recorded a Notice of Trustee's Sale under King County Recording No.
4 20090701001269, a copy of which is attached as Exhibit E. This Notice of
5 Trustee's Sale set a foreclosure sale date for 2 October 2009, which is more than
6 six years ago. The Notice of Trustee's Sale was in the customary statutory form
7 and contained this language in Paragraph V:
8

9 The sale may be terminated any time after 09/21/09 (11
10 days before the date), and before the sale by the
11 Borrower, Grantor, any Guarantor or the holder of any
12 recorded junior lien or encumbrance paying the entire
13 balance of principal and interest secured by the Deed of
Trust, plus costs, fees, and advances, if any made
pursuant to the terms of the obligation and/or Deed of
Trust.

14 11. This statutory language effectively accelerated the debt as of 22 September
15 2009.

16 **2011 Termination of Foreclosure Sale.**

17 12. Northwest did not hold this scheduled sale on 2 October 2009, and eventually
18 terminated the sale on 8 September 2011 by recording a Notice of
19 Discontinuance under King County Recording No. 20110912000719, a copy is
20 attached as Exhibit F.
21

22 **Other Events Accelerating the Note.**

23 13. Upon information and belief, other actions were taken by US Bank or its
24 predecessors that likewise accelerated the Note.
25

26 **Assignment to US Bank.**

1 14. On or about 28 November 2012, the Note and Deed of Trust were assigned to
2 US Bank by an assignment recorded under King County Recording No.
3 20130627000471, a copy of which is attached as Exhibit G. Upon information or
4 belief, US Bank is the owner and holder of the beneficial interest in the Note and
5 Deed of Trust.
6

7 **2014 Appointment of MTC Financial as Trustee.**

8 15. On 10 December 2014, US Bank appointed MTC Financial as Trustee under the
9 Deed of Trust by an Appointment of Successor Trustee recorded under King
10 County Recording No. 20141210002427, a copy of which is attached as Exhibit
11 H.
12

13 **Foreclosure by MTC Financial.**

14 16. MTC Financial commenced a nonjudicial foreclosure on the Robinsons by
15 recording a Notice of Trustee's Sale under King County Recording No.
16 20150622001639, a copy of which is attached as Exhibit I. However, US Bank
17 failed to follow the requirements of RCW 61.24.031 prior to sending out the Notice
18 of Default and failed to mediate with the Robinsons as required by RCW
19 61.24.163, despite efforts by the Robinsons to mediate. US Bank's foreclosure
20 is improper and should not go forward until those statutory requirements are met.
21 MTC Financial set a Trustee's sale date for 23 October 2015. Shortly prior to the
22 sale date, the Robinsons filed this Chapter 13 proceeding in Bankruptcy Court.
23

24 **Statute of Limitations Has Passed.**

25 17. The statute of limitations for collection of a note secured by a deed of trust is six
26 years per RCW 4.16.040. The Note was accelerated by the 2009 foreclosure no
27

1 later than 22 September 2009. More than six years has passed since 22
2 September 2009, so the statute of limitations to collect the Note and Deed of
3 Trust has passed.

4 **The Deed of Trust is Outlawed.**

5 18. Pursuant to RCW 7.28.300, the Deed of Trust is outlawed because the statute of
6 limitations has passed. RCW 7.28.300 reads as follows:

7 Quieting title against outlawed mortgage or deed of trust.

8 The record owner of real estate may maintain an action to
9 quiet title against the lien of a mortgage or deed of trust on the
10 real estate where an action to foreclose such mortgage or
11 deed of trust would be barred by the statute of limitations, and,
12 upon proof sufficient to satisfy the court, may have judgment
quieting title against such a lien.

13 **Judgment Quieting Title and Declaratory Judgement That Note Cannot Be**
14 **Collected and Order of Permanent Injunction.**

15 19. Judgment should be entered quieting title to the Real Property in Plaintiffs as
16 against US Bank and anyone claiming by, through or under US Bank. Similarly,
17 a declaratory judgment should be entered against US Bank and MTC Financial
18 adjudicating that the Note cannot be collected and permanently enjoining them
19 from taking any action to collect the Note and/or foreclose the Deed of Trust.

20 **Attorney's Fees and Costs.**

21 20. The Note and Deed of Trust contain clauses providing for reasonable attorney's
22 fees and costs. Under Washington's reciprocity statute, RCW 4.84.330, Plaintiffs
23 are entitled to their reasonable attorney's fees and costs.
24

25 **Consumer Protection Act Violations.**

26 21. Defendants' violations of RCW 61.24.031 and 61.24.163 are violations of the
27

1 Consumer Protection Act under RCW 61.24.135(2). Plaintiffs are entitled to
2 damages and costs and reasonable attorney's fees per RCW 19.86.

3 **PRAYER FOR RELIEF**

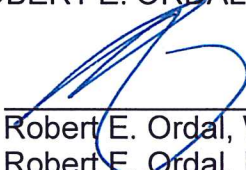
4 WHEREFORE plaintiffs pray the Court as follows:

- 5 a. For a judgment quieting title in Plaintiffs to the Real Property as against US
6 Bank and anyone claiming by, though or under US Bank;
7
8 b. For a judgment adjudicating that the Note cannot be collected;
9
10 c. For an injunction enjoining US Bank and MTC Financial from foreclosing the
11 Deed of Trust;
12
13 d. For a judgment for Plaintiffs' reasonable costs and attorney's fees which are
14 allowed under the Note and Deed of Trust;
15
16 e. For damages, costs and attorney's fees under RCW 19.86;
17
18 f. For a judgment that Defendants foreclosure is invalid and an injunction
19 enjoining Defendants from further action to foreclose until Defendants
20 comply with RCW 61.24.031 and 61.24.163; and
21
22 g. For such other relief as the Court deems just.

23 DATED this 8th day of February 2016.

24 ROBERT E. ORDAL, PLLC

25 By

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LIST OF EXHIBITS

- Exhibit A: Note
- Exhibit B: Deed of Trust No. 20070226000405
- Exhibit C: Assignment of Deed of Trust No. 20080910000913
- Exhibit D: Appointment of Successor Trustee No. 20080910000914
- Exhibit E: Notice of Trustee's Sale No. 20090701001269
- Exhibit F: Notice of Discontinuance No. 20110912000719
- Exhibit G: Assignment of Deed of Trust No. 20130627000471
- Exhibit H: Appointment of Successor Trustee No. 20141210002427
- Exhibit I: Notice of Trustee's Sale No. 20150622001639